

SEAN GLENN JACOBSON,)	
)	
Petitioner,)	3:11-cv-00024-LRH-RAM
)	
vs.)	
)	
JACK PALMER,)	ORDER
)	
Respondent.)	

In order to proceed with an appeal from this court, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1). Generally, a petitioner must make “a substantial showing of the denial of a constitutional right” to warrant a certificate of appealability. *Id.* The Supreme Court has held that a petitioner “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. As we stated in *Slack*, “[w]here a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that

1 reasonable jurists would find the district court's assessment of the constitutional claims
2 debatable or wrong."

3 *Id.* at 1040 (quoting *Slack*, 529 U.S. at 484).

4 The Court has considered the issues raised by petitioner, with respect to whether they satisfy the
5 standard for issuance of a certificate of appeal, and the Court determines that none meet that standard.
6 Moreover, the dismissal of this action was without prejudice, making an appeal improper. Accordingly,
7 the Court will deny petitioner a certificate of appealability.

8 **IT IS FURTHER ORDERED** that petitioner's motion for **A CERTIFICATE OF**
9 **APPEALABILITY (ECF No. 25)** is **DENIED**.

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11 Dated this 19th day of August, 2011.



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14 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE